TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 335.

THE STATE OF ALABAMA, JOHN SWANN AND JOHN A. BILLUPS, TRUSTEES AS WELL AS GRANTEES, PLAINTIFFS IN ERROR,

vs.

THEODORE G. MONTAGUE IN HIS OWN RIGHT AND AS AGENT OF XENOPHON WHEELER, GEORGE M. SHERWOOD, ISAAC H. TOWER, ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED OCTOBER 5, 1883.

THE LAW ASSOCIATION
—OF—
PHILADELPHIA

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1 *Declaration.*

Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE STATE OF ALABAMA and JOHN SWANN and JOHN A. BILLUPS, who are trustees as well as grantees, under and in pursuance of an act of the General Assembly of the said State of Alabama, approved February 23rd, 1876, entitled "An act to ratify and confirm the settlement of the existing indebtedness of this State as proposed in the report of the commissioners appointed under an act approved 17th of December, 1874, and which was communicated to the General Assembly by message of 24th of January, 1876, and to carry said settlement into effect, by the issuance of new bonds of this State at a reduced rate of interest, in adjustment of a portion of said indebtedness, and the surrender of certain securities held by the State in discharge of another portion of said indebtedness,

vs.

THEODORE G. MONTAGUE, who is a citizen of Hamilton county, Tennessee, in his own right, and as attorney-in-fact or agent of and for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodburry, and Louis Aufrecht, as appears by authority from the parties last above named, to the said Montague, duly registered in Hamilton county, Tennessee. Also Xenophon
2 Wheeler, George M. Sherwood, citizens of Hamilton county, Tennessee, and Isaac H. Tower, of Dedham, Massachusetts, but who is frequently at Chattanooga, Tennessee, and Louis Aufrecht, of Cleveland, Ohio. Also the following, who are heirs-at-law, and believed to be all the heirs-at-law, of Francis Woodburry, deceased, to wit: Charles Woodburry, — Monteith, formerly Woodburry, and her husband, George Monteith, of Ohio; Arthur Woodburry, of —; and Sarah M. Sherwood, wife of George M. Sherwood, with her husband, George M. Sherwood, the two last named being residents of Hamilton county, Tennessee, heirs-at-law of Francis Woodburry, dec'd. Also the following, who are heirs-at-law, and believed to be all the heirs-at-law, of Thomas J. Carlile, deceased, and who are all citizens of Hamilton county, Tennessee, to wit: Marion Carlile, widow of Thos. J. Carlile, Walter Carlile, Nellie Younge, formerly Nellie Carlile, and her husband, William W. Younge: Cornea or Cornelia Carlile, and —, heirs-at-law of Thomas J. Carlile, deceased. Also the following, residents of Hamilton county, Tennessee: Harriet E. Gurrabrant, J. A.
3 Kauher, Bradford Post, Maggie Roberts, D. F. Blanton, Mattie Worley and her husband, Samuel Worley; and Jakob Revor, — Adcock, widow of J. A. Adcock, deceased, and Albert D. Mahoney, of Colorado. And the following as defendants, all citizens of Hamilton county, Tennessee, who are in actual possession of some portions of the property hereinafter described: Widow of J. A. Adcock; Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, Samuel Worley, and William Barlow.

First count. The plaintiff, The State of Alabama, sues all the defendants in the caption hereof named to recover the following tracts, or parcels, or lots of land, which are situated in Hamilton county, in the State of Tennessee, and which were purchased by the Alabama and Chattanooga Railroad Company, an incorporated body, from J. P. McMillen, of Chattanooga, Tennessee, on the 25th day of March, 1869, as evidenced by a title-bond of that date, executed by said J. P. McMillen to said last-mentioned railroad company, and which are described in, and conveyed by, a deed executed by said McMillen to said last-mentioned railroad company, and bearing date March 31st, 1870, as follows, and which lands are described
4 as follows: Beginning at a stake at the southeast corner of a five-acre tract, known as the Billingsley lot, two hundred and thirty-three and one-third (233⅓ ft.) feet from J. B. Weaver's southeast corner; thence south 70° east seven hundred and eighty-seven (787 ft.) feet to a stake; thence north 20° east nine hundred thirty-three and one-third (933⅓ ft.) feet to a stake; thence north 70° west five hundred sixty-eight and one half (568½ ft.) feet to the southwest corner of the three-acre lot occupied by A. O. Fisher; thence north 20° east, with the line of said three-acre lot, three hundred and ninety-two (392 ft.) feet to a stake in the line formerly of J. P. Long's, now S. J. Boyce; thence north 70° west, with said line, five hundred and thirty-one (531 ft.) feet to a stake—Slayton's northeast corner; thence south 20° west, with Slayton's and Mond's line, three hundred and ninety-two (392 ft.) feet to a stake; thence south 70° east three hundred and sixteen (316 ft.) feet to a stake—the northeast corner of the aforesaid Billingsly five-acre lot; thence with the line of said Billingsly five-acre lot nine hundred and thirty-three and one-third (933⅓ ft.) feet to the beginning, containing, accord-
5 ing to survey, about twenty-two acres, of which the State of Alabama was possessed, claiming in fee before the commencement of this suit, and after such possession accrued the defendants, on the fist day of February, 1877, entered thereupon, and unlawfully withhold and detain the same, together with five thousand dollars due for detention thereof.

Second count. The plaintiffs, John Swan and John A. Billups, who are trustees as well as grantees, under and in pursuance of the said act of the General Assembly of the State of Alabama, approved February 23rd, 1876, mentioned and referred to above in the caption of this declaration, and who sue as such trustees and grantees, sue all the defendants named as such in the caption of this declaration to recover the following tracts, lots, or parcels of land, which are situated in Hamilton county, in the State of Tennessee, which were purchased by the Alabama and Chattanooga Railroad Company, an incorporated body, from J. P. McMillen, of Chattanooga, Tennessee, on the 25th day of March, 1869, as evidenced by
6 a title-bond of that date, executed by said J. P. McMillen to said last-mentioned railroad company, and which are described in and conveyed by a deed executed by said McMillen to said last-mentioned railroad company, and bearing date March 31st, 1870, as follows: Beginning at a stake the southeast corner of a five-

acre lot, known as the Billingsly lot, two hundred [and] thirty-three and one-third (233⅓ ft.) feet from J. B. Weaver's southeast corner; thence south 70° east seven hundred and eighty-seven (787 ft.) feet to a stake; thence north 20° east nine hundred [and] thirty-three and one-third (933⅓ ft.) feet to a stake; thence north 70° west five hundred [and] sixty-eight and one-half (568½ ft.) feet to the southwest corner of the three-acre lot occupied by G. O. Fisher; thence north 20° east, with the line of said three-acre lot, three hundred and ninety-two feet to a stake in the line formerly of J. P. Long's, now S. J. Boyce; thence north 70° west, with said line, five hundred and thirty-one (531 ft.) feet to a stake [in] Slayton's northeast corner; thence south 20° west, with Slayton's and Mond's line, three hundred and ninety-two (392 ft.) feet to a stake; thence south
7 70° east three hundred and sixteen (316 ft.) feet to a stake the northeast corner of the aforesaid Billingsly five-acre tract; thence with the line of said Billingsly five-acre tract nine hundred and thirty-three and one-third (933⅓ ft.) feet to the beginning, containing, according to survey, about twenty-two acres, of which the said John Swann and John A. Billups, trustees and grantees as aforesaid, were possessed, claiming in fee, before the commencement of this suit and after such possession accrued, the defendants on the 29th day of April, 1877, entered thereupon and unlawfully withhold and detain the same, together with five thonsand dollars for the detention thereof.

Third count. The plaintiff, the State of Alabama, and the plaintiffs, John Swann and John A. Billups, who are trustees, as well as grantees, under and in pursuance of said act of the General Assembly of the State of Alabama, approved February 23rd, 1876, mentioned and referred to in the caption of this declaration, and who sue as such trustees and grantees jointly, with the plaintiff the State of Alabama, sue all the defendants named as such in the caption of this declaration to recover all the tracts, lots, or parcels of
8 land which are situate in Hamilton county, in the State of Tennessee, which were purchased by the Alabama and Chattanooga Railroad Company, an incorporated body, from J. P. McMillen, of Chattanooga, Tennessee, on the 25th day of March, 1869, as evidenced by a title bond of that date, executed by said J. P. McMillen to said last-mentioned railroad company, and which are described in and conveyed by a deed executed by said McMillen to said last-mentioned railroad company, and bearing date March 31st, 1870, as follows: Beginning at a stake at the southeast corner of a five-acre lot, known as the Billingsly lot, two hundred and thirty-three and one-third (233⅓ ft.) feet from J. B. Weaver's southeast corner, thence south 70° east seven hundred and eighty-seven (787 ft.) to a stake, thence north 20° east nine hundred thirty-three and one-third (933⅓ ft.) feet to a stake, thence north 70° west five hundred sixty-eight and one-half (568½ ft.) feet to the southwest corner of the three-acre tract occupied by G. O. Fisher, thence north 20° east with the line of said three-acre lot three hundred and ninety-two (392 ft.) feet to a stake in the line formerly of J. P. Long's,
9 now S. J. Boyce; thence north 70° west with said line five hundred and thirty-one (531 ft.) feet to a stake, Slayton's

northeast corner; thence south 20° west with Slayton's and Mond's line three hundred and ninety-two (392 ft.) feet to a stake; thence south 70° east three hundred and sixteen (316 ft.) feet to a stake, the northeast corner of the aforesaid Billingsly five-acre tract nine hundred thirty-three and one-third (933⅓ ft.) feet to the point of beginning, containing, according to survey, about twenty-two acres, of which the plaintiffs, the State of Alabama, and John Swann and John A. Billups, trustees as well as grante-s, were possessed, claiming in fee, before the commencement of this suit and after such possession accrued, the defendants, on the 1st day of February, 1877, set up some claim and unlawfully withhold and detain the same, together with five thousand dollars due for the detention thereof.

And all the plaintiffs aver that the State of Alabama is one of the United States, and is a public political corporation, and is a citizen of the said State of Alabama, and is so to be deemed and taken, and that said John Swan is a subject of Great Britain, and an
10 alien, and that said John A. Billups is a citizen of the State of Alabama, and that the defendants are citizens of States other than the State of Alabama, and none of them are citizens of the State of Alabama, and that the said lands are worth more than five thousand dollars.

S. F. RICE,
By W. L. EAKIN,
W. L. EAKIN,
Attorneys for Plaintiff.

Endorsed: No. 6. Declaration. The State of Alabama *et als. vs.* Theo. G. Montague *et al.* Filed March 21, 1881. A. R. Humes, clerk, by C. W. Vuison, d. cl'k. Sam'l F. Rice and W. L. Eakin, attorney- for plaintiffs.

Summons.

Circuit Court of the United States for the Southern Div[illegible]on of the Eastern District of Tennessee.

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

You are hereby commanded to summons Theodore G. Montague, who is a citizen of Hamilton county, Tennessee, in his own right and as attorney-in-fact or agent of and for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodbury,
11 and Louis Aufrecht, as appears by authority from the parties last above named to the said Montague, duly registered in Hamilton county, Tennessee.

Also Xenophon Wheeler, George M. Sherwood, citizens of Hamilton county, Tennessee, and Isaac H. Tower, of Dedham, Massachusetts, but who is frequently at Chattanooga, Tennessee; and Louis Aufrecht, of Cleveland, Ohio.

Also the following, who are heirs-at-law, and believed to be all the heirs-at-law, of Francis Woodbury, dec'd, to wit: Charles Woodbury, Mary Monteith, formerly Mary Woodbury, and her husband,

George Monteith, of Ohio; Arthur Woodburry, Frank P. Woodbury, of —, and Sarah M. Sherwood, wife of George M. Sherwood, with her husband, George M. Sherwood, the two last named being residents of Hamilton county, Tennessee, heirs-at-law of Francis Woodbury, dec'd.

Also the following, who are heirs-at-law, and believed to be all the heirs-at-law, of Thomas J. Carlile, deceased, and who are all citizens of Hamilton county, Tennessee, to wit: Marion Carlile, widow of Thomas J. Carlile; Walker Carlile, Nellie Yonge, formerly Nellie Carlile, and her husband, William W. Yonge; Cornea or Cornelia Carlile and ——, heirs-at-law of Thomas J. Carlile, deceased.

12 Also the following residents of Hamilton county, Tennessee, to wit: Harriet E. Garrabrant, J. A. Kauher, Bradford Post, Maggie Roberts, D. F. Blanton, Mattie Worley and her husband, Samuel Worley; Jakob Peyor, —— Adcock, widow of J. A. Adcock, deceased; and Albert D. Mahoney, of Colorado.

And the following, as defendants: All citizens of Hamilton county, Tennessee, who are in actual possession of some portions of the property in the declaration described, to wit, —— Adcock, widow of J. A. Adcock, dec'd; Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, Samuel Worley, and William Barlow, if to be found in your district, and who are citizens of States other than the State of Alabama, to be and appear before the judges of the circuit court of the United States, in the sixth circuit, for the southern division of the eastern district of Tennessee, at the court-house in Chattanooga, in said southern division and said eastern district, in said State, on the first Monday in April next, then and there to answer the complaint of the State of Alabama, which is a citizen of the State of Alabama, and John Swann and John A. Billups, trustees as well as grantees, the said Swann being a subject of Great

13 Britain and an alien, and the said Billups being a citizen of the State of Alabama.

Herein fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 21st day in March, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the 105th.

A. R. HUMES, *Clerk*,
By C. W. VINSON, *Dept. Clerk*.

Endorsed: No. 6. Summons. The State of Alabama *et als. vs.* T. G. Montague *et als.* This summons issued March 21st, 1881. A. R. Humes, clerk, by C. W. Vinson, d. c'lk, S. F. Rice, & W. L. Eakin, atty's for plaintiff. $51.00 of marshal's fees paid by clerk. "Came to hand same day, issued and executed by delivering a copy of the declaration to Theo. G. Montague, and executing the within summons upon him for himself or in his own right and as attorney-in-fact of Xen. Wheeler, Geo. M. Sherwood, Louis Aufrecht, Francis Woodbury, and Isaac H. Tower, and also by summoning Xen. Wheeler, Geo. M. Sherwood and wife, Sarah Sherwood; Marion Car-

lisle, Walter Carlisle, Nellie Yonge and her husband, W. W. Yonge; Cornelia or Cornea Carlisle, Harriet E. Garrabrant, Bradford
14 Post, D. F. Blanton, Mattie Worley, Sam'l Worley, Jakob Peyor, —— Adcock, widow of J. S. Adcock; J. A. Adcock, Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, and Wm. Barlow. The other within-named defendants not to be found in this district this 2d day of April, 1881. L. L. Sample, D. U. S. marshal, eastern dist. Tenn."

Be it remembered that at a circuit court of the United States began and held for the southern division of the eastern district of Tennessee, at the court-house in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, being the 4th day of April, A. D. 1881—present and presid'ng, the honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

THURSDAY, *April 7th*, 1881.

Court met pursuant to adjournment. Present and presiding, the Hon. D. M. Key, judge, &c.

THE STATE OF ALABAMA and Others
vs.
THEO. G. MONTAGUE & Others. } Ejectment No. 6.

In this cause Theodore G. Montague acknowledges service
15 for Isaac H. Tower, & Xenophon Wheeler enters his appearance as their attorney. And on application of the plaintiff's they are allowed to amend their writ and declaration in this cause so as to make Mary Monteith a defendant instead of blank Monteith, and also to make Frank P. Woodberry as defendant instead of blank Woodberry, and an alias summons is ordered to issue as to J. A. Kauher, Maggie Roberts, or any other defendant who has not been summoned. And upon application of plaintiffs it is ordered that publication be made in some newspaper published in Chattanooga, Tennessee, for the time & in the manner prescribed by law, requiring the defendants, Charles J. Woodberry, Frank P. Woodberry, & Arthur Woodberry, Mary Monteith & husband, George Monteith; Lewis Aufrecht, & Albert D. Mahaney to appear before the court on the first Monday of October, 1881, to plead, demur, or make other defense to this action.

Alias Summons.

The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

You are hereby commanded, as heretofore, to summon J. A. Kauher & Maggie Roberts, if to be found in your district, to be and appear before the judges of the circuit court of the United
16 States, in the sixth circuit, for the southern division of the eastern district of Tennessee, at the Federal court-rooms in Chattanooga, in said State, on the first Monday in October next, then and there to answer The State of Alabama, which is a citizen

of the State of Alabama, and John Swann and John A. Billups, trustees as well as grantees, the said Swann being a subject of Great Britain and an alien, and the said Billups being a citizen of the State of Alabama. Herein fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this the 28th day in April, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the 105.

A. R. HUMES, *Clerk*,
By C. W. VINSON, *Dep't Clerk*.

Endorsed: No. 6. The State of Alabama & others *versus* T. G. Montague *et als.* Alias summons. This summons was issued on the 28th day of April, 1881. A. R. Humes, clerk, by C. W. Vinson, D. C. S. T. Rice & W. L. Eakin, attorney-, Hamilton county. "Came to hand May 1st, 1881. Search made, but def'ts not to be found in this district. L. L. Sample, dep'ty U. S. marshal, eastern dist. of Tenn."

17 The President of the United States of America to the marshal of the eastern district of Tennessee, Greeting:

You are hereby commanded, as heretofore, to summon Charles Woodburry, Mary Monteith, formerly Woodburry, and her husband, George Monteith; Arthur Woodburry & Frank P. Woodburry, heirs-at-law of Francis Woodburry, dec'd, & others, if to be found in your district, to be and appear before the judges of the circuit court of the United States, in the sixth circuit for the southern division of the eastern district of Tennessee, at the Federal court-rooms in Chattanooga, in said State, on the first Monday in October next, then and there to answer (with Theodore G. Montague and others, in court by summons) the complaint of the State of Alabama, which is a citizen of the State of Alabama, and John Swann and John A. Billups, trustees as well as grantees, the said Swann being a subject of Great Britain and an alien, and the said Billups being a citizen of the State of Alabama. Herein fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Chattanooga, in the said district, the 6th day of June, in the year of Lord 1881, and of our
18 Independence 105th.

A. R. HUMES, *Clerk*,
By C. W. VINSON, *Deputy Clerk*.

Endorsed: No. 6. The State of Alabama *versus* T. G. Montague *et als.* Alias summons. This summons was issued on the 6th day of June, 1881. A. R. Humes, clerk, by C. W. Vinson, D. C., Hamilton county. Marshal's costs: Officer L. L. Sample, 4 summons at $2 = $8.00. 4 copies summons at $4.00; total, $12.00. Filed June 6th, 1881. A. R. Humes, cl'k, by C. W. Vinson, D. C. "Came to hand at Chattanooga, Tenn., and executed on same day, issued on all the parties within named, and delivering to each a copy of this summons June 6th, 1881. L. L. Sample, D. U. S. marshal."

Be it remembered that at a circuit court of the United States began and held for the southern division of the eastern district of Tennessee at the court-house in Chattanooga, within said district and the sixth circuit, on the first Monday, it being the 3d day of October, A. D. 1881—present and presiding, the Hon. D. M. Key, judge of the United States district court for the eastern and middle district of Tennessee—the following proceedings were had, to wit:

19 THURSDAY, *October 6th*, 1881.

Court met pursuant to adjournment.

Present and presiding, the Hon. John Baxter, judge of the U. S. circuit court, &c., and the Hon. D. McKey, judge of the U. S. district court, &c.

THE STATE OF ALABAMA *et als.*
vs.
T. G. MONTAGUE *et als.* } Eject.

Upon application of the defendants they have two months in which to plead, but not to delay the trial.

Pleas.

Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE STATE OF ALABAMA, JOHN SWANN, and JOHN BILLUPS, Plaintiffs,
vs.
THEODORE G. MONTAGUE *et al.*, Defendants.

Comes the defendants, Frank P. Woodburry, Arthur Woodburry, George Monteith, and Mary Monteith, Harriet E. Garrabrant, Jacob Peyer, —— Adcock, widow of J. A. Adcock, Bird Ashley, Geo. Harris, C. B. Reeves, M. B. Rogers, William Barlow, and Albert D. Mahoney, and for joint and several plea to all the counts of plaintiffs' declaration say that they, or either of them, are not in possession of, nor claiming, nor in any manner exercising any acts
20 of ownership over the premises in the declaration described or any part thereof, and of this they put themselves upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And the defendants, T. G. Montague, Xenophon Wheeler, Isaac H. Tower, Geo. M. Sherwood, and Charles Woodbury, for plea to all the counts of plaintiffs' declaration, say that the premises in plaintiffs' declaration described, have, for the most part been divided into blocks, and subdivided into town lots, according to a plat exhibited with these pleas, and to which reference is here made, and these defendants are not in possession of, nor are they claiming, nor in any manner exercising any acts of ownership over the following lots, forming parts of the premises in plaintiffs' declaration described, viz:

1. One lot in block 6, beginning at the rock corner of McMillan's one-acre tract, running then west with the south line of Henry St.

50 feet to a stake, fronting 50 feet on Henry street, and running back southwardly, of the uniform width of 50 feet, 150 feet to a ten-feet alley.

21 2. Lots 1 & 2, block 9, northwest corner of Patton & Fisher Sts., fronting 110 feet on Fisher St., and running, of the uniform width of 110 feet eastwardly, 110 feet to a ten-feet alley.

3. Lot 3, block 4, being a lot fronting 50 feet on Weaver St. and running of the uniform width of 50 feet eastwardly 105 feet to a ten-feet alley.

4. Lots 1, 2 & 3, block 1, southeast corner of Carr & Henry St's, fronting 150 feet on Carr St. and running of the uniform width of 150 feet eastwardly 125 feet to a ten-feet alley.

5. Lot 16, block 9, southwest corner of Baldwin & Patton St's, fronting 60 feet on Baldwin St. and running back of the uniform width of 60 feet westwardly 110 feet to a ten-feet alley.

6. Lot 2, block 4, fronting 50 feet on Weaver St. and running back of the uniform width of 50 feet eastwardly 105 feet to a ten-feet alley.

7. Lot 8, block 5, fronting 55 feet on Weaver St. and running back of the uniform width of 55 feet eastwardly 105 [feet] to a ten-feet alley.

8. Lot 15, block 9, fronting 50 feet on Baldwin St. and running back of the uniform width of 50 feet westwardly 110 feet to a ten-feet alley.

22 9. Lot 1, block 4, fronting 60 feet on Weaver St. and running back of the uniform width of 60 feet eastwardly 105 feet to a ten-feet alley.

10. Lots 6 & 7, in block 1, northeast corner of Carr & Tower St's, fronting 109 feet on Carr St. and running back of the uniform width of 109 feet eastwardly 125 feet to a ten-feet alley.

And as to the remainder of the premises in plaintiffs' declaration described, these defendants say they are not, nor are either of them guilty of unlawfully withholding and detaining the same, or any part thereof, as plaintiffs in their declaration have alleged, and of this they put themselves upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, Louis Aufrecht, for separate plea to all the counts of plaintiffs' declaration says, that he is not in possession of nor claiming, nor in any manner exercising any acts of ownership over the lots forming portions of the premises in plaintiffs' declaration described and numbered "1, 2, 3, 4, 5, 6, 7, 8 & 9," of the pre-

23 ceding plea of defendants, Montague, Wheeler, Tower, Sherwood and Woodbury.

And as to the remainder of the premises in plaintiffs' declaration described, this defendant says he is not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this he puts himself upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendants, Marion Carlile, Walter Carlile, Nellie Yonge, & W. W. Yonge, for joint and several plea to all the counts of plaintiffs' declaration, say that they are not in possession of nor claiming, nor in any manner exercising any acts of ownership over the premises in plaintiffs' declaration described, or any part thereof, except in and over one lot forming a part of said premises and described as a lot in block 6, as shown in plat mentioned in the plea of Montague, Wheeler, Tower, Sherwood, & Woodbury, to which reference is here made, and described as beginning at the rock corner of Thos. McMillin's one-acre tract, running thence west with the south line of Henry St. 50 feet to a stake, fronting 50 feet on Henry St., and running back, of the uniform width of 50 feet, southwardly 150 feet to a ten-feet alley.

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And as to this lot, these defendants say they are not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this they put themselves upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And the defendants, Marion Carlile, Walter Carlile, Nellie Yonge, & W. W. Yonge, for further plea to all the counts of plaintiffs' declaration, say that the lot described in the last preceding plea, in which they, with Cornelia, who is a minor and without any regular guardian, claim in fee, and of which they are in possession, is of less value than the sum of five hundred dollars, & this they are ready to verify.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant Bradford Post, separate plea to all the counts of plaintiffs' declaration, says he is not in possession of nor claiming, nor in any way exercising any acts of ownership over the premises in plaintiffs' declaration described, or any part thereof, except in and over one lot shown in the plat made an exhibit to the plea of Montague, Wheeler, Tower, Sherwood, & Woodbury, and described on said said plat as lot 2, block 9, fronting 50 feet on Fisher St., and running back the uniform width of 50 feet, eastwardly 110 feet to a ten-feet alley; and as to this lot defendant says he is not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this he puts himself upon the country.

25

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, Bradford Post, for further separate plea to all the counts of plaintiff's declaration, says that the lot described in his last preceding plea, which he claims in fee, and of which he is in possession, is of less value than the sum of five hundred dollars, and this he is ready to verify.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, Maggie Roberts, for separate plea to all the counts of plaintiff's declaration, says she is not in possession of, nor
26 claiming, nor in any manner exercising any acts of ownership over the premises in plaintiff's declaration described, except in and over one lot marked on plat, made exhibit to plea of Montague, Wheeler, Tower, Sherwood, & Woodburry as lot 3, block 4, fronting 50 feet on Weaver St., and running back of the uniform width of 50 feet, eastwardly 105 feet to a ten-feet alley; and as to this lot defendant says she is not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this she puts herself upon the country.

WHEELER & MARSHALL,
Att'y for Defendants.

And defendant, Maggie Roberts, who is a married woman, whose husband, Wm. E. Roberts, is not sued in this action, for further plea to all the counts of plaintiff's declaration, says that the lot described in her last preceding plea, which her and her said husband claim in fee, and of which they are in possession, is of less value than the sum of five hundred dollars, and this she is ready to verify.

WHEELER & MARSHALL,
Att'y for Defendants.

27 And the defendant, J. A. Kauher, for separate plea to all the counts of plaintiffs' declaration, says that he is not in possession of, and does not claim any interest in, nor is he in any manner exercising any acts of ownership over, the premises in plaintiffs' declaration described, or any part thereof, except in and over three lots, marked in the plat made exhibit to the plea of defendants, Montaque, Wheeler, Tower, Sherwood, and Woodbury, as lots 1, 2, & 3, block 1, southeast corner of Carr & Henry Sts., fronting 150 feet on Carr St., and running back of the uniform width of 150 feet, eastwardly, 125 feet to a ten-feet alley; and as to these lots defendant says he is not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this he puts himself upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, J. A. Kauher, for further plea to all the counts of of plaintiffs' declaration, says that the lots described in his last preceding plea, which he claims in fee, and of which he is in possession, *is* of less value than the sum of five hundred dollars,
28 and this he is ready to verify.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, D. F. Blanton, for separate plea to all the counts of plaintiffs' declaration, says that he is not in possession of, and he does not claim any interest in, nor is he in any manner exercising any acts of ownership over, the premises in the declaration described, or any part thereof, except in and over one lot, marked in exhibit to plea of defendants, Montague, Wheeler, Tower, Sherwood, &

Wooburry, as lot 16, block 9, southwest corner of Baldwin & Patten Sts., fronting 60 feet on Baldwin St., and running back of the uniform width of 60 feet southwardly, 110 feet to a ten feet-alley; and as to this lot defendant says he is not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this he puts himself upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, D. F. Blanton, for further plea to all the counts of plaintiffs' declaration, says that the lot described in his
29 last preceding plea, which he owns in fee, and of which he is possession, is of less value than the sum of five hundred dollars, and this he is ready to verify.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, Samuel H. Worthy, for plea to all the counts of plaintiffs' declaration, says that he is not in possession of, and does not claim any interest in, nor is he exercising any acts of ownership over, the premises in plaintiffs' declaration described, or any part thereof, except in and over one lot, marked in exhibit to plea of defendants, Montague, Wheeler, Tower, Sherwood, & Woodbury, as lot 2, block 4, fronting 50 feet on Weaver St., and running back of the uniform width of 50 feet, eastwardly, 105 feet, to a ten-feet alley; and as — this lot defendant says he is not guilty of unlawfully withholding and detaining the same, or any part thereof, and of this he puts himself upon the country.

WHEELER & MARSHALL,
Att'ys for Defendants.

And defendant, Sam'l H. Worthy, for further plea to all
30 the counts of plaintiffs' declaration, says that the lot described in his last preceding plea, which he claims in fee, and of which he is in possession, is of less value than the sum of five hundred dollars, and this he is ready to verify.

WHEELER & MARSHALL,
Att'ys for Defendants.

Endorsed: No. 6. The State of Alabama *et als. vs.* Theo. G. Montague *et al.* Pleas of defendants. Filed March 18th, 1882. A. R. Humes, clerk, by C. W. Vinson, D. C. Wheeler & Marshall, att'ys for defendants.

Be it remembered that at a circuit court of the United States began and held for the southern division of the eastern district of Tennessee, at the court-house in the city of Chattanooga, within said district and the sixth circuit, on the first Monday, being the 2nd day of October, in the year of our Lord one thousand eight hundred and eighty-two, and in the 107th year of the Independence of the United States—present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

(Here follows diagram, marked p. 31.)

32 *Ejectment No. 6.*

FRIDAY, *November 24th*, 1882.

Court met pursuant to adjournment.
Present and presiding, the Hon. D. M. Key, judge, &c.

THE STATE OF ALABAMA and JOHN SWANN and JOHN A. BILLUPS, Trustees and Grantees, of said State of Alabama,

vs.

THEODORE G. MONTAGUE, in his own right and as attorney-in-fact or agent of and for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodberry, and Louis Aufrecht; & Xenophon Wheelor, George M. Sherwood, Isaac H. Tower, Louis Aufrecht, Charles Woodberry, Mary Montieth, formerly Mary Woodberry, and husband, George Montieth; Arthur Woodbury, Sarah M. Sherwood, wife of George M. Sherwood, with her husband George M. Sherwood, heirs-at-law of Francis Woodberry, deceased; Marion Carlile, widow of Thos. J. Carlile; Walter Carlile, Nellie Young, formerly Nellie Carlile, and husband William W. Young; Cornea or Cornelia Carlile, all heirs-at-law of Thos. J. Carlile, deceased; & Harriet E. Garrabrant, J. A. Kauher, Bradford Post, Maggie Roberts, D. F. Blanton, Mattie Worley and husband, Samuel Worley; Jacob Peyor, —— Adcock, widow of J. A. Adcock, deceased; Albert D. Mahoney & widow of J. A.
33 Adcock, Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, Samuel Worley, and William Barlow.

Came the parties by attorneys, and also came the following jury, to wit, 1, J. P. Cooper; 2, J. T. Fry; 3, Wash. Morgan; 4, W. P. Duff; 5, William Pryor; 6, Joe Evans; 7, Peter Brown; 8, C. L. Keith; 9, D. N. McGill; 10, John Price; 11, James F. Henry; 12, J. F. W. Manning, all good and lawful men, citizens of the southern division of the eastern district of Tennessee, who, being elected, empaneled, sworn, and charged to well and truly try the issue between the parties joined, *who* upon their oaths do say that they find the issue in favor of the defendants. It is, therefore, considered by the court that the defendants go hence and recover of the plaintiffs all the unadjudged cost in this cause. And it appearing to the court that at the time of the commencement of this suit the plaintiffs deposited with the clerk of this court for the purpose of securing costs in this cause one hundred and fifty dollars, and that there is still in his hands a sufficient amount of said sum to pay all the cost in this cause.

It is ordered by the court that the clerk pay out of funds still in his hands all the cost in this cause

34 The plaintiffs then moved the court for a new trial, & stated the grounds of this motion, and for liberty to show cause why a new trial should be granted in this cause.

then alleged to be vested in the State of Alabama, to the plaintiffs, John Swann & Jno. A. Billups, now on file in the office of the clerk & master of the chancery court at Chattanooga, Tennesse, in the cause of D. J. Duffy *vs.* Frederick Wolfe *et al.*, No. 2043, and
39 it shall have the same effect as if legally certified & filed as evidence with notice.

They may also read as evidence in connection with the various acts of the General Assembly of the State of Alabama, referred to in said deed, a copy of a mortgage executed by The Alabama & Chattanooga Railroad Company to the State of Alabama, dated second March, 1870, to secure to said State in payment of said bonds mentioned therein as was required by the act of Gen. Assembly of Alabama, Feb'y 11th, 1870.

Also to read in like manner the several decrees for the district court of the United States for the middle district of Alabama, in the matter of bankruptcy of the Alabama & Chattanooga Railroad Company, so far as plaintiffs deem necessary, touching all the right, title, estate, and interest acquired by said State in the lands and property mentioned and described in said mortgage & other lands & property at the purchase under the decree of said courts of bankruptcy, without producing an entire transcript of the record, and defendants may read all or any portions of the record in
40 said causes in like manner. Either party may, in like manner, read such final decrees of any other courts touching any right the State may have acquired to land or property of the Alabama & Chattanooga Railroad Company pertinent to the issue in this cause.

Plaintiffs may also read a copy of deed executed by J. P. McMillin to The Alabama & Chattanooga Railroad Company, dated March 30th, 1870, registered in book S, reg. office of Hamilton county, Tenn., alleged to cover the lands in dispute.

No further notice of filing these various papers is required and no question of the competency of this testimony is waived, but only the authentication of said *said* papers as to the entire record.

Plaintiffs may also read a copy of a deed made by Jno. C. Stanton to Thomas Webster, dated ——, recorded in book —, page —, for such purpose as it may be competent evidence.

It is also admitted by all parties to this suit that The Alabama & Chattanooga Railroad Company never conveyed or parted with, or attempted to convey or part with, the property sued for in this
41 action, or any part of it, or any right to any part of it at any time before it executed its mortgage to the State of Alabama, dated March 2nd, 1870, & herein above mentioned; and it is further admitted that the said J. P. McMillin is the common source from which all the parties to this suit derive whatever title or claim they may respectively have to the property sued for in this suit, or to any part thereof.

It is agreed that the defendants, on their part, may read as evidence upon the trial of this cause a certified copy of a deed purporting to be executed by the Alabama & Chattanooga Railroad Company by J. C. Stanton, its attorney-in-fact, to Thos. Webster, bearing

date February 25th, 1871, and of record in the register's office of Hamilton county, Tennessee, in book "M," pages 39 & 40. Also a certified copy of a power of attorney purporting to be executed by the Alabama & Chattanooga Railroad Company, by D. N. Stanton, its president, to J. C. Stanton, bearing date March 2nd, 1871, and of record in the register's office of said Hamilton county, in book "M,"
pages 83 & 84; also a certified copy of a deed purporting to
42 be executed by said Thos. Webster to Isaac H. Power & others, bearing date April 8, 1871, and of record in the register's office of said Hamilton county, in book "M," pages 221 & 222, the production of the originals of said papers being hereby waived.

But all questions as to any authority of these parties to execute any of said papers are not to be affected by this agreement, its object alone being to waive the production of the various original papers herein referred to.

W. L. EAKIN,
Att'y for Plaintiff.
S. F. RICE,
By W. L. EAKIN,
Att'y for Plaintiff.
WHEELER & MARSHALL,
Att'ys for Def'ts.

Endorsed: Ex. A. Filed Nov. 20, 1882. A. R. Humes, clerk, by C. W. Vinson, D. C.

EXHIBIT B.

Circuit Court of the United States for the Southern Division of the Eastern District of Tennessee.

THE STATE OF ALABAMA, JOHN SWANN, and JOHN A. BILLUPS, Plaintiffs,
vs.
THEODORE G. MONTAGUE *et als.*, Defendants.

In the foregoing cause, to save cost and the necessity of
43 producing papers and witnesses, it is hereby admitted that the defendants, Theo. G. Montague, Isaac H. Tower, Hen. Wheeler, Louis Aufrecht, Geo. M. Sherwood, and Francis Woodbury, dec'd, claiming to be the owners in fee to the entire tract described in the plaintiffs' declaration, divided, soon after April 8th, 1871, the same into blocks and lots, as shown on plat made on exhibit to their plea in this cause, and made sales of lots to various parties, the numbers of lots and names of parties hereafter given, and that the following is a correct history of each of said lots since the sale of same, viz:

1. Lot No. 1, of block 9, as shown in said exhibit, was purchased by Harriet E. Garrabrant, and a bond for title executed to her under date May 4, 1871, who took possession of same shortly after her purchase, enclosed the same, and erected a house upon it in the year 1872. She subsequently conveyed the premises to Jacob Peyor, who in turn conveyed them to —— Paxton.

The lot has been continuously occupied by said Harriet E.
44 Garrabrant and those claiming under or through her since the erection of said house.

2. Lot 3, in block 4, as shown in said exhibit, was purchased by Mrs. Maggie Roberts, wife of def't, W. E. Roberts, in June, 1872, and a title bond was executed to her at the date of purchase. She took immediate possession of said lot and in 1872 built a house thereon, and the lot & house has been continuously occuously occupied by Maggie Roberts or by her tenants since the building of said house, she still claiming to own the premises.

3. Lot 16, block 9, was purchased by D. F. Blanton, Octo. 31, 1872, at which date a bond for title was executed to him. He took immediate possession of the lot, enclosing it with a fence, and built a house upon it in 1873, and has occupied the premises continuously ever since.

4. Lot 2, block 4, was purchased by Mrs. Mattie Worthy, wife of Sam'l H. Worthy, and a title bond was executed to her of date May 7, 1872. She built a house on the lot in the summer of 1872. She subsequently died, leaving a will in which the lot was devised to her husband, who still occupies the premises.

45 The lot has been continuously occupied since the summer of 1872 by Mattie Worthy and her husband.

5. Lot 8, block 5, was purchased by Maria A. Shelly, to whom a bond for title was executed bearing date May 4, 1873. She subsequently conveyed the lot to J. A. Adcock, and the premises are now claimed by one —— Rhinehart.

A house was built upon the lot some time in the year 1873, and the premises have been continuously occupied since 1873 by Maria A. Shelly and those claiming under or through her.

6. Lot 9, block 5, was purchased by Nath'l Brice, to whom a bond for title was executed June 1, 1872. The purchaser built a house upon the lot in 1873, and afterwards died, and the premises were sold by order of the county court of Hamilton county, upon petition of the adm'r of Brice, and was purchased by F. G. Montague, Xen. Wheeler, J. H. Tower, Louis Aufrecht, George M. Sherwood, & Francis Woodbury, who still claim to own the same, and have held the premises through tenants since their purchase.

46 The lot has been continuously occupied since the building of the house upon it by said Brice and those claiming under or through him.

7. Lot 1, block 4, was purchased by Mrs. Anna Cole, to whom a title bond was executed May 3, 1872.

The purchaser at once went into possession, built a house upon the lot in 1872. The property, by mesne conveyances, has passed to — Rhinehart, who is now in possession, claiming to own the same. The premises have been continuously occupied since 1862 by Mrs. Anna Cole, and those claiming through or under her.

8. Lot 2, block 9, was purchased by Harriet E. Garrabrant on the 4th May, 1871, and a bond for title was executed to her of that date. She subsequently conveyed her interest in the lot to Bradford Post & Albert D. Mahoney, partners as Post & Mahoney, who still claim to own the same. Said lot has never been improved.

9. Lot 1, block 1, was purchased by Jacob Kauber in July, 1871, and lots 2 and 3, of same block, in February, 1872, and deeds were executed to him at the dates of purchase. He claims to own the same, but said lots have never been improved.

47 10. Lots 6 and 7, in block 1, were purchased in 1871 by Louis Aufrecht, and a deed was executed to him at date of purchase. He still claims to own said lots, but they have never been improved.

11. The lot in block 6 described in first separate plea of Marion Carlile, Walker Carlile, Nellie Yonge, and W. W. Yonge was purchased by T. J Carlile, to whom a deed was executed Ap'l 29, 1872. Said lot has never been improved.

In all the above-named cases, where bonds for title are recited as having been executed to purchasers, it is admitted that deeds were subsequently executed by said T. G. Montague, & his said co-grantees from said Thomas Webster, to the purchasers, or their vendees, upon payment of the purchase —, except in the case of Nath'l Bruce, but the production of these bonds for title, or certified copies of same, or the original deeds, or certified copies of same, or any mesne conveyances by which the title to lot or lots purports to be conveyed from

48 the original purchaser to the present claimant of same, is hereby expressly waived, and this agreement shall stand as a substitute for all title papers by which said lots have been attempted to be transferred, and for evidence of possession and occupation.

W. L. EAKIN,
Att'y for Plaintiffs
W. L. EAKIN,
For Sam'l F. Rice.
WHEELER & MARSHALL,
Att'ys for Def'ts.

Endorsed: Ex. "B." Filed Nov. 20, 1882. A. R. Humes, cl'k, by C. W. Vinson, D. C.

The plaintiffs then read the said copy of said mortgage of the Alabama & Chattanooga Railroad Company to the State of Alabama, contained in exhibit marked Exhibit C, in the words & figures following:

EXHIBIT C.

This indenture of mortgage made this second day of March, in the year eighteen hundred and seventy, by and between the Alabama and Chattanooga Railroad Company, a corporation of the States of Alabama, Georgia, Mississippi, and Tennessee, the party of the first part, and the State of Alabama, the party of the second part witnesseth, that whereas said State of Alabama, by an act en-

49 titled "An act to loan the credit of the State of Alabama to the Alabama and Chattanooga Railroad Company for the purpose of expediting the construction of the railroad of said company within the State of Alabama and approved February 11th, 1870, has granted certain aid to said corporation, and has in and by said act

required the Governor of said State to issue bonds of said State to an amount not exceeding two millions of dollars in favor of said company, bearing interest at a rate not exceeding eight per cent. per annum, which said interest shall be payable semi-annually in currency or coin, and the bonds shall be payable at the expiration of not less than fifteen nor more than thirty years upon the terms and conditions in said act set forth.

And whereas, said act further provides that the Governor of the said State shall only issue said bonds upon receiving in exchange therefor an equal amount of first mortgage bonds of said railroad company bearing the same rate of interest as the above-mentioned State bonds and secured by a first mortgage upon the lands
50 granted by the United States to said railroad company and upon any interest which said company now has or may hereafter lawfully acquire in or to said lands, with the reservation that the said Alabama and Chattanooga Railroad Company shall have the privilege and right of selling said lands, or any part thereof, in accordance with the act of Congress granting the same: Provided, however, That the proceeds of said sale shall be appropriated to the payment of the aforesaid first mortgage bonds of the said railroad company issued to the State.

Provided, further, that the governor shall require said railroad company, before issuing to said company said bonds, to give the State of Alabama a first mortgage on the telegraph line and telegraph offices along the line of said road belonging to said company; also on the machine shops and all other property in the State and in Georgia, Tennessee, and Mississippi belonging to said company; also on all coal mines now open or hereafter to be opened and worked belonging to said company; also upon all iron or other mineral lands and all iron manufacturing establishments now in operation or thereafter to be constructed.

51 And whereas said Alabama and Chattanooga Railroad Company, in order to obtain said State aid, proposes to issue to said State bonds of said corporation, secured as by said act is required, and entitled first-mortgage land bonds of the Alabama and Chattanooga Railroad Company:

Now, therefore, the said Alabama and Chattanooga Railroad Company, in compliance with the terms and conditions of said act, and for the purpose of obtaining the aid thereby granted to this corporation, and in order to secure the punctual payment of all said first-mortgage land bonds of this corporation, does hereby grant, bargain, sell, enfeoff, release, assign, and convey unto the State of Alabama, and its successors and assigns, forever, all lands granted by the United States to and for the benefit of this company, and all the right, title, interest, and estate which said company now has, or may hereafter lawfully acquire, in or to said lands, subject to this reservation to said company, as by said act provided; that said company shall have the privilege and right of selling said lands, or any
52 part thereof, in accordance with the act of Congress granting the same, and entitled "An act to renew certain grants of land to the State of Alabama," and approved April 10th, 1869: Provided,

however, That the proceeds of said sales shall be appropriated to the payment of the first-mortgage land bonds of said company to be issued to the State of Alabama, as aforesaid; also the telegraph line and telegraph offices along the line of said road, and belonging to said company; also the machine-shops and all other property in said States of Alabama, Georgia, Tennessee, and Mississippi belonging to said company; also all coal mines now open or hereafter to be opened and worked belonging to said company, and all iron or other mineral lands, and all iron-manufacturing establishments now in operation and hereafter to be constructed; saving and excepting only from said granted premises such and so much of the same as said company may have heretofore conveyed in mortgage in or by either or both of two indentures of mortgage, both made on December 19th, 1868, and covering the railroad and certain other
53 property of said company, for a more specific description whereof reference is hereby made to said two indentures, the same having been recorded in the counties where said road is located.

To have and to hold the said granted premises mentioned as aforesaid unto the said State of Alabama, its successors and assigns, to and for the only use, benefit, and behoof of said State, its successors and assigns, forever:

Provided, however, That if said company, its successors or assigns, shall well and duly pay or cause to be paid to the State of Alabama, its successors or assigns, any and all of the above-mentioned first-mortgage land bonds of said company issued to said State as above provided, and all coupons or interest warrants issued with or belonging to the same when and as the same shall respectively fall due, then this deed shall be null and void; otherwise to remain in full force and effect.

In witness whereof the said Alabama and Chattanooga Railroad Company has caused its corporate seal to be hereto affixed
54 and these presents to be executed on its behalf by Daniel N. Stanton, its president, on the day and year first above named. (In twelve parts.)

[Alabama & Chattanooga Railroad Company Seal.]

ALABAMA AND CHATTANOOGA
RAILROAD COMPANY,
By D. N. STANTON, *Pres't.*

Executed in presence of—
R. T. PAINE, JR.,
JAS. B. BELL.

Endorsed: Ev. "C."

A deed from J. P. McMillin to the Alabama & Chattanooga Railroad Company, marked Exhibit D, in the words & figures following, viz:

EXHIBIT D.

CHATTANOOGA, TENNESSEE.

For and in consideration of nine thousand dollars, three thousand heretofore and six thousand this day to me in hand paid, the receipt of which is hereby acknowledged, and in compliance with a title bond given, dated 25th day of March, 1869, I hereby transfer and convey unto the Alabama and Chattanooga Railroad Company a certain piece or parcel of land lying within the corporate limits of the city of Chattanooga, Hamilton county, Tennessee, bounded as follows, to wit:

Beginning at a stake, the S. E. corner of a five-acre lot, known as the Billingsley lot, two hundred & thirty-three & one-third
54½ feet (233⅓ *ft.*) from J. B. Weaver's S. E. corner; thence S. 70° E. seven hundred and eighty-seven (787 ft.) *feet* to a stake; thence N. 20° E. nine hundred thirty-three and one-third (933⅓) feet to a stake; thence N. 70° W. five hundred and sixty-eight and a half (568½) feet to the S. W. corner of the three-acre lot occupied by A. O. Fisher; thence N. 20° E., with the line of said three acre lot, three hundred and ninety-two (392) feet to a stake in the line formerly of J. P. Long, now S. J. Boyce; thence N. 70° W., with said line, five hundred and thirty-one (531) feet to a stake, Slayton's N. E. corner; thence S. 20 W., with Slayton's and Mond's line, three hundred and nine-two (392) feet to a stake; thence S. 70° E. three hundred & sixteen (316) feet to a stake, the N. E. corner of the aforesaid Billingsley five-acre lot; thence with the line of said lot nine hundred and thirty-there and one-third (933⅓) feet to the beginning, containing, according to survey, about twenty-two acres.

To have and to hold said land unto the said Alabama and Chattanooga Railroad Company and its assigns or successors in
55 office forever. The title to which I hereby warrant against the lawful claims of all persons whatever.

In testimony whereof I have hereunto set my hand and seal this March 31st, 1870.

JOHN P. McMILLIN. [SEAL.]

Attest:
JOHN M. GILLESPIE.
JAMES N. TRIGG.

Which it was admitted covered the lot of land in dispute.

Plaintiff also read a copy of a deed executed by Geo. S. Houston, as Gov'n'r of the State of Alabama, made to John Swann & Jno. A. Billups, in the words and figures following, to wit:

Deed of Geo. S. Houston, as Gov'r of Alabama, to Swann & Billups.

STATE OF ALABAMA, *Montgomery County:*

Know all men by these presents that the State of Alabama, in pursuance of the act of the General Assembly "to ratify and confirm the settlement of the existing indebtedness of the State, as proposed in the report of the commissioners appointed under the act

approved 17th December, 1874," and which was communicated to the General Assembly by the message of the Governor of the 24th of January, 1876, and to carry said settlement into effect by the issuance of new bonds of this State at a reduced rate of interest in adjustment of a portion of said indebtedness, and the
55½ surrender of certain securities held by the State, in discharge of another portion of said indebtedness, approved February 23rd, 1876, and in consideration of the full and perfect performance of all the conditions and requirements contained in the said act by the holders of the bonds hereinafter mentioned, doth hereby assign, transfer, convey, remise, release, and forever quit-claim unto John A. Billups, of the county of Pickens and State aforsaid, the trustee appointed by the Governor of this State, under the authority of the said act, and unto John Swann, of 5 Frederick's Place, Old Jewry, London, the trustee appointed by the bondholders, by virtue of the authority granted by said act, and their successors, all the bonds issued by the Alabama and Chattanooga Railroad Company to the Governor of this State in exchange for the bonds of the State of Alabama, issued under the authority of the act to loan the credit of the State of Alabama to the Alabama and Chattanooga Railroad Company for the purpose of expediting the construction of the railroad of said company within the State of Alabama, ap-
56 proved February 11, 1870; the deed of mortgage executed by said Alabama and Chattanooga Railroad Company to the State of Alabama, dated second of March, 1870, to secure the payment of said bonds so issued by said railroad company, as required by said act of 11th of February, 1870, all the right, title, and interest which this State has, or is entitled to, in the lands and property described in said deed of mortgage last named, executed by said railroad company; all the right, title, estate, and interest acquired by said State in the lands and property mentioned and described in said mortgage at the purchase, under the decree of the district court of the United States for the middle district of Alabama, in the matter of bankruptcy of the Alabama and Chattanooga Railroad Company; all the right, title, and interest which this State has in or upon, or to the telegraph lines and telegraph offices and instruments, and on the machine-shops and machinery, and all coal mines, and iron and mineral lands, and iron and manufacturing establishments, or all or any other property in said statute of 11th of Feb-
57 ruary, 1870, referred to by operation of said statute, or by any deed or conveyance or contract made by said railroad company for the indemnity and protection of this State; all money yet unpaid by purchasers of any parts, parcels, or portions of said lands embraced in said mortgage to this State by said railroad company, and which have been sold by said railroad company, under the authority reserved to it in said act of the 11th of February, 1870; any and all sums of money and securities remaining in the hands or possession of any person or persons, corporation or corporations, the proceeds of any lands, part of said mortgaged property, which may have been sold under the authority reserved as aforesaid, and which have not been accounted for and paid into the treasury of this State

as required by said act of 11th of February, 1870; all the right, title, and interest which the State has in or to any part of the land embraced within the conflicting or overlapping limits of lands granted by the acts of Congress for the benefit of railroads in this State, and which, on partition heretofore made, or hereafter to be made, by agreement or otherwise, shall be assigned or conveyed to said Alabama and Chattanooga Railroad Company, or its assignees, as the part belonging to said railroad company under said grants of Congress, and is, or may be, embraced in any conveyance to this State by said railroad company, or covered by any lien held by this State by any statute or by any contract or agreement made by said railroad company for the benefit of the State, but nothing herein contained shall convey or give any right to said trustees or the holders of said bonds in any lands held by this State under said acts of Congress as trustee for the construction of any railroad, the beneficial interest wherein is not held by this State; all right of this State upon or against said railroad company for the creation and preservation of a sinking fund and the payment into the treasury of the proceeds thereof, subject, however, to the conditions contained in the sixteenth section of the act approved February 23, 1876, by authority of which this conveyance is made: To have and to hold all the said property, and all right, title, and interest in the said property, hereby assigned, transferred, and conveyed unto the said John A. Billups and the said John Swann, trustees as aforesaid, and their successors forever, upon trust and confidence; nevertheless, that the said trustees shall receive and apply said property and rights for the use and benefit of the holders of the said bonds mentioned in the fifteenth section of the said act approved February 23d, 1876, who may accept the said act approved February 23d, 1876, in relation thereto, and surrender their bonds, as therein provided. Said trustees shall proceed and collect all the choses in action hereby assigned and transferred, and shall proceed and sell all the other property hereby conveyed under authority of said act, and after paying into the treasury of this State ten per cent. of the net proceeds of the sales of all said bonds so made by them, having first deducted the reasonable expenses incurred in executing the trust thereof till the whole amount of interest heretofore paid by this State upon said bonds described in the fifteenth section of said act shall be reimbursed to the State, shall distribute the proceeds of all collections and sales so made by them among the holders of said bonds in proportion to their respective interests therein. Said trustees shall have power to sue for and recover for the purpose aforesaid all choses in action, and claims and demands of all kinds herein conveyed, and to sue for and recover all lots and parcels of lands, part of the lands hereby conveyed, which have been obtained and are now held under fraudulent and fictitious sales and conveyances, and for this purpose, if need be, may use the name of the State, but always at their own cost and charge; but where sales of said lands, or any portion thereof, have heretofore been made to purchasers in good faith, under the authority reserved to said railroad company by the said act approved February 11th, 1870, said trustees shall

make title thereto where not already made, but shall collect the purchase money therefor when not already paid, and all sums, part of said purchase money remaining unpaid, and be entitled to all the securities for the payment thereof; said sales of land may be made from time to time, as may be found expedient, and in the manner most beneficial to said bondholders; and said trustees may make title thereto to all persons and corporations, pur-
61 chasers, who may be permitted by the constitution of this State to hold lands therein, till the whole of said lands are sold. All moneys realized from said trust property shall be distributed so that all holders of said bonds who may have surrended the same to the Governor, or as directed in the said act, approved February 23d, 1876, shall receive their proportionate share thereof, but the residue shall be retained by said trustees and be distributed to the several holders of bonds in their respective proportions, only when they shall surrender their said bonds as provided in the said act of February 23rd, 1876; but the trust hereby created shall be closed at the end of ten years from the first day of May, eighteen hundred and seventy-six, after which date all of said bonds described in the fifteenth section of said act approved February 23d, 1876, not then presented and surrendered, shall become barred of all right to participate in the benefits of this trust or share in the proceeds thereof, and shall have no claims against this State, and all money then in the hands of said trustees, part of said trust estate, shall be distributed *pro rata* among the holders
62 of said bonds, who shall have surrendered the same; and all lands then remaining unsold shall be conveyed by said trustees to such persons so entitled to share in said trust moneys, or to such person or persons as they may direct. The said bonds and mortgages of said railroad company herein assigned to the said trustees shall be by them held to protect the title of the said trustees and the rights of those beneficially interested therein, and shall not, by this assignment, be held to be extinguished or in any manner impaired, but shall remain an existing security for the purpose aforesaid. Said trustees, for their services, shall be paid such commissions upon the proceeds of collections and sales as the majority in number and value of the bondholders as shall have surrendered their bonds may determine; the said trustees shall give notice of their appointment and of the terms of this trust at least four times in each year by advertisement in the London *Times* newspaper, and in one daily newspaper in the city of New York.

In witness whereof, I, George S. Houston, as Governor of
63 the State of Alabama, by virtue of the authority by the said act of the General Assembly of Alabama, approved February 23rd, 1876, in me vested, have set my hand and caused the great seal of the State of Alabama to be hereunto affixed, on this eighth day of February, A. D. one thousand eight hundred and seventy-seven.

[SEAL.]

GEO. S. HOUSTON,
Governor of the State of Alabama.

Sworn to and subscribed before me this, the 8th day of February, 1877.

C. D. WHITMAN,
Notary Public.

STATE OF ALABAMA, *Montgomery County:*

I, C. D. Whitman, a duly-authorized and commissioned notary public of said State, hereby certify that George S. Houston, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me this day that, being informed of the contents of the conveyance, he, as Governor of said State of Alabama, executed the same voluntarily, on the day the same bears date. Given under my hand this the eighth day of February, in the year of our Lord one thousand eight hundred and seventy-seven.

C. D. WHITMAN,
Notary Public.

64 All being copies of papers referred to in said two agreements signed by the counsel of the parties. It was admitted that said deeds & mortgage had been duly executed and were registered in Hamilton county, Tennessee.

The plaintiff also read in evidence to the jury, by assent of the court & defendant's attorney, the act of the General Assembly of the State of Alabama, approved Feb'y 11th, 1870, entitled "An act to loan the credit of the State of Alabama to the Alabama & Chattanooga Railroad Company for the purpose of expediting the construction of the railroad of said company within the State of Alabama." Also read in evidence, by like assent, the act of the General Assembly of Alabama, approved Feb'y 25, 1876, which is commonly called the "debt-settlement act," and is entitled "An act to ratify & confirm the settlement of the existing indebtedness of this State as proposed in the report of the commissioners appointed under the act approved 17th December, 1884, & was communicated to the General Assembly by message of the governor of 24th January, 1874, and carry said settlement into effect by the issuance of new bonds," &c.

65 It was agreed & consented to in open court by all parties to this suit that these two acts of the General Assembly of Alabama above mentioned, so far as relevant to any issue in this cause, shall be deemed and taken as a part of this bill of exceptions without being herein copied or inserted, not only in this court, but in the Supreme Court of the United States, or other revising court, as the acts may appear in any book or pamphlet published or recognized by or under the authority of the State of Alabama or her officers.

The plaintiff also read in evidence one of the two thousand bonds executed by the Alabama & Chattanooga Railroad Company, to secure which the said mortgage was executed, with interest coupons all attached that are due & to fall due since Jan'y, 1876, and offered

to produce & read the entire series of bonds unless their production was waived by the defendants; which was done.

Plaintiff proved that J. P. McMillan died testate in Hamilton county, Tennessee, and his two sons, who were sworn &
66 examined as witnesses, were his executors & were unable, after diligent search, to find any title bond executed by their father to any one for the land in controversy. They stated that they had heard their father in the year 1869 & about March in that year speak of having sold the land in dispute for $3,000.00 cash & six thousand upon a credit of twelve months. The trade he spoke of was made with John C. Stanton. Their father never stated whether it was for himself or for the Alabama & Chattanooga Railroad Company. Stanton was superintendent for the Alabama & Chattanooga Railroad Company at that time. Nor did they remember to whom he said he executed his bond for title.

For the purpose of showing that the defendants were all estopped from insisting on or making available to them in this suit anything in the nature or quality of the title of said mortgagor, the Alabama & Chattanooga Railroad Company, after the execution of said mortgage, or defect in the title of said mortgagor of any kind, the plaintiffs read and introduced as evidence a deed of conveyance executed to Thomas Webster by the mortgagor, dated 25th
67 day of March, 1871, in the words & figures following, viz:

EXHIBIT E.

For and in consideration of thirteen thousand and two hundred dollars to me paid, and the receipt whereof is hereby acknowledged, I John C. Stanton, attorney-in-fact and gen'l sup't of the Alabama and Chattanooga Railroad Company, have this day bargained and sold, and do hereby transfer and convey, unto Thomas Webster, of the city of Chattanooga, county of Hamilton, and State of Tennessee, the following-described real estate, viz., lying within the corporate limits of the city of Chattanooga, Hamilton county, Tennessee, and bounded as follows, to wit: Beginning at a stake, the S. E. corner of a five (5) acre lot, known as the Billingsly lot, 233⅓ feet from J. E. Weaver's S. E. corner; thence south 70° east seven hundred and eighty-seven (787) feet to a stake; thence north 20° east nine hundred thirty-three and one third (933⅓) feet to a stake; thence north 70° W. five hundred and sixty-eight and one half (568½) feet to the S. W. corner of the three-acre lot on which G. O. Fisher resides; thence W. 20 E., with the line of said three-acre lot, three hundred and ninety-two (392) feet to a stake, in the line
68 formerly of J. P. Long, now S. J. Boyce; thence N. 70° W., with said line, five hundred and thirty-one feet to a stake, Slayton's N. E. corner; thence S. 20 W., with Slayton's and ——— line, three hundred and ninety-two feet to a stake, thence south 70° east three hundred and sixteen (316) feet to a stake, at the northeast corner of the aforesaid Billingsly fiv-eacre lot; thence S. 20° W., with line of said lot nine hundred and thirty-three and one third feet to the beginning, containing about 22 acres.

To have and to hold the same to the said Thomas Webster, his heirs and assigns, forever, in fee simple. I do covenant with the said Thomas Webster that I am lawfully seized of said property, have a good right to convey it, and that the same is unencumbered. I do further covenant with said Thomas Webster, and his heirs and legal representatives, that I will forever warrant & defend the title thereto against all lawful claims whatever.

Witness my hand and seal, this 25th day of February, 1871.

J. C. STANTON, [SEAL.]
Att'y-in-Fact for Alabama and Chattanooga Railroad Company.

In presence of—
J. H. VAN ALSTON.
HENRY E. WAITE.

69 STATE OF TENNESSEE, *Hamilton County:*

Personally appeared before me, J. H. Hardie, clerk of the county court of Hamilton county aforesaid, J. H. Van Alston and Henry E. Waite, subscribing witnesses to the within deed, who, being first sworn, deposed and said: That they are acquainted with J. C. Stanton, the bargainor, and that he acknowledged the same in their presence to be his act and deed upon the day it bears date.

Witness my hand, at office, this 25 day of February, 1871.

J. H. HARDIE, *Clerk.*

STATE OF TENNESSEE, *Hamilton County:*

REGISTER'S OFFICE, *February 25th*, 1871.

At 3 o'clock p. m. then was the foregoing deed and certificate received for registration, with thirteen dollars and fifty cents, U. S. revenue stamp attached and cancelled, and is now of record in book U, pages 39 & 40.

Witness my hand, at office, in Chattanooga, the day and date last above written.

JOHN F. HAMILL, *Register,*
Per J. E. DEARING, *D. R.*

STATE OF TENNESSEE, *Hamilton County:*

I, H. C. Beck, register of said county, do hereby certify that
70 the foregoing 2½ pages contain a full, true, and correct copy of a deed, together with the certificates of probate and registration thereof, made by J. C. Stanton, att'y-in-fact for A. & C. R. R., to Thos. Webster, as the same remains of record in my office.

Witness my hand, this 10th day of April, 1882.

H. C. BECK, *Register.*

Endorsed: Ex. "E." Filed November 20, 1882. A. R. Humes, cl'k, by C. W. Vinson, D. C.

Also the deed of said Webster to defendants, Montague, Wheeler, & others, in the words & figures following, viz:

Exhibit G.

For and in consideration of thirteen thousand and two hundred dollars to me paid, the receipt whereof is hereby acknowledged, I, Thomas Webster, of the city of Chattanooga, Tennessee, have this day bargained and sold, and do hereby transfer and convey, unto Isaac H. Tower, of Dedham, Mass.; Theodore G. Montague, Xen. Wheeler, and Geo. M. Sherwood, of Chattanooga, Tennessee; Francis Woodberry, of Jackson, Michigan; and Louis Aufrecht, of Cleveland, Ohio, the following-described real estate, viz., lying within the corporate limits of the city of Chattanooga, Hamilton county, Tennessee, and bounded as follows, to wit:

71 Beginning at a stake, the S. E. corner of a five (5) acre lot, known as the Billingsley lot, 233⅓ feet from J. B. Weaver's S. E. corner; thence south 70° east seven hundred and eighty-seven (787) feet to a stake; thence N. 20° east nine hundred and thirty-three and one-third (933⅓) feet to a stake; thence N. 70° W. five hundred and sixty-eight and one-half (568½) feet to the S. W. corner of the three acres on which G. O. Fisher resides; thence W. 20° E., with the line of said three-acre lot, three hundred and ninety-two (392) feet to a stake in the line formerly of J. P. Long, now S. J. Boyce; thence N. 70° W., with said line, five hundred and thirty-one feet to a stake, Slayton's N. E. corner; thence S. 20 W., with Slayton's and — line, three hundred and ninety-two feet to a stake; thence S. 70° E. three hundred and sixteen (316) feet to a stake, at the N. E. corner of the aforesaid Billingsley five-acre lot; thence S. 20° W., with the line of said lot, nine hundred and thirty-three and one-third feet to the beginning, containing about 22 acres.

Said tract is deeded to said Tower, Montague, Wheeler, Sherwood, Woodberry, and Aufrecht in the following proportions, viz: To said Tower, twenty-five one-hundred thirty-seconds ($\frac{25}{1320}$) of

72 said tract; to said Montague & said Wheeler, the same proportion each; to said Sherwood and Woodberry jointly, forty-seven one hundred thirty-seconds ($\frac{47}{1320}$) of said tract; and to said Aufrecht, ten one hundred thirty-seconds ($\frac{10}{1320}$) of said tract, said Tower, Montague, and Wheeler having paid of the purchase-money the sum of twenty-five hundred dollars each, said Sherwood & Woodberry jointly the sum of forty-seven hundred dollars, and said Aufrecht the sum of one thousand dollars.

To have and to hold the same to the said Isaac H. Tower, Theodore G. Montague, Xen. Wheeler, Geo. M. Sherwood, Francis Woodberry, and Louis Aufrecht, their heirs and assigns, forever, in fee simple.

I do covenant with said Isaac H. Tower, Theodore G. Montague, Xen. Wheeler, Geo. M. Sherwood, Francis Woodberry, and Louis Aufrecht that I am lawfully seized of said property, have a good right to convey it, and that the same is unencumbered.

I do further covenant with said Isaac H. Tower, Theodore G. Montague, Xen. Wheeler, Geo. M. Sherwood, Francis Woodberry, and Louis Aufrecht, and their heirs and legal representatives, that I will forever warrant and defend the title thereto against all

73 lawful claims whatever.

Witness my hand and seal this 8th day of April, 1871.
THOS. WEBSTER. [SEAL.]

STATE OF TENNESSEE, *Hamilton County:*

Personally appeared before me, J. H. Hardie, clerk of the county court of said county, Thos. Walker, the within-named bargainer, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand at office this 8th day of April, 1871.
J. H. HARDIE, *Clerk.*

STATE OF TENNESSEE, *Hamilton County:*

REGISTER'S OFFICE.

The 10th day of April, 1871, at 10 o'clock a. m., there was the foregoing instrument and certificate received for registration with thirteen dollars & fifty cents in U. S. revenue stamps attached and cancelled, and is now of record in book "U," pages 221 & 222.

Witness my hand at office in Chattanooga, the day and date last above written.

JOHN F. HAMILL, *Register,*
Per J. E. DEARING, *D. R.*

Endorsed: Ex. "G." Filed November 20th, 1882. A. R. Humes, cl'k, by C. W. Vinson, D. C.

74 Also a power of attorney from the Alabama & Chattanooga Railroad Company to John C. Stanton, in the following words & figures, viz:

EXHIBIT F.

Know all men by these presents that the Alabama and Chattanooga Railroad Company have made, constituted, and appointed, and by these presents do make, constitute, and appoint, John C. Stanton, the general superintendent of said railroad company, its lawful agent and attorney-in-fact, to sell, transfer, and convey a certain piece or parcel of real estate situate within the corporate limits of the city of Chattanooga, Tennessee, bounded and described as follows, to wit: Beginning at a stake the S. E. corner of a five (5) acre lot, known as the Billingsly lot, 233⅓ feet from J. B. Weaver's S. E. corner; thence south 70° east seven hundred and eighty-seven (787) feet to a stake; thence N. 20°, east nine hundred thirty-three and one-third (933⅓) feet to a stake; thence north 70° W. five hundred and sixty-eight and one-half (568½) feet to the S. W. corner of the three acres on which G. O. Fisher resides; thence W. 20° E. with the line of said three-acre lot three hundred and ninety-two (392) feet to a stake in the line formerly of J. P. Long, now J. S. Boyce's; thence
75 N. 70° west with said line five hundred and thirty-one feet to a stake Slayton's N. E. corner; thence S. 20° W. with Slayton's and — line three hundred and ninety-two feet to a stake; thence S. 70° E. three hundred and sixteen feet to a stake at the N. W. corner of the aforesaid Billingsly five-acre lot; thence S. 20° W.

with the line of said lot nine hundred and thirty-three and one-third feet to the beginning, containing about 22 acres, hereby ratifying and confirming any sale or disposition said agent or attorney may make or may have made in the premises; and the said J. C. Stanton is hereby authorized and empowered to make to the purchaser or purchasers of said described premises a deed of warranty for the same, to sign the name of said company as attorney-in-fact, and any act of said attorney or deed made by him shall have the same binding force and effect as if made by the said Alabama and Chattanooga Railroad Company.

In witness whereof the said Alabama and Chattanooga Railroad Company, by its president, hereto sets its hand [and] affixes its corporate seal at ——, this 2nd day of March, A. D. 1871.

[Seal Alabama and Chattanooga Railroad Company.]

ALABAMA AND CHATTANOOGA
RAILROAD COMPANY,
By D. N. STANTON, *Pres't.*

Executed in presence of—
WM. V. ANTER.
WM. H. CLARKSON.

76, 77, 78 STATE OF NEW YORK, *City and County of New York:*

Personally appeared before me, a commissioner of the State of Tennessee, duly appointed and commissioned, &c., D. M. Stanton, president of the Alabama and Chattanooga Railroad Company, of the county aforesaid, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained.

Witness my hand and official seal at office in New York this 2nd day of March, 1871.

[Seal Wm. V. Archer, Commissioner for Tennessee in the City & County of New York.]

WM. V. ARCHER,
Commissioner for Tennessee in New York.

STATE OF TENNESSEE, *Hamilton County:* REGISTER'S OFFICE.

March 6th, 1871, at 3 o'clock p. m., then was the foregoing instrument and certificate received for registration with one dollar U. S. revenue stamp attached and cancelled, and is now of record in book "U," pages 83 & 84.

Witness my hand at office in Chattanooga the day and date last above written.

JOHN F. HAMILL, *Register,*
Per J. E. DEARING, *D. R.*

79 STATE OF TENNESSEE, *Hamilton County.*

I, H. C. Beck, register of said county, do hereby certify that the foregoing two pages and 23 lines, containing a full, true, and correct copy of a deed or power of attorney, executed by D. N. Stanton, pres't A. & C. R. R., to Jno. C. Stanton, together with the certificates

of probate and registration thereof, as the same remains of record in my office.

Witness my hand at office this 10 April, 1882.

H. C. BECK, *Register.*

Endorsed: Ex. "F." Filed Nov. 20, 1882. A. R. Humes, clerk. By C. W. Vinson, d. c.

And also proved that all the title any of the defendants had to the land in dispute was derived from and through Thomas Webster, & his title was derived alone from the Alabama & Chattanooga Railroad Company. All of which deeds and papers & said acts of the Legislature of Alabama are made parts of this bill of exceptions.

Plaintiffs also proved that the land agent of the Alabama & Chattanooga Railroad Company had control of the land in dispute,
80 & looked after it after the purchase from McMillan in March, 1869.

They also introduced the attorney of Theo. Montague & others who purchased from Thomas Webster, who stated that he presumed he saw the said mortgage when he looked up the title for the purchasers; he did not remember if he did, however; he supposed the land in dispute was not included in the mortgage; at all events, he was now of that opinion. He was a party to this suit, and defendants do not claim under any title other than that obtained through said Webster.

It was also proved that said Thomas Webster received title to said land in consideration of a debt due him from the mortgagor, the Alabama & Chattanooga Railroad Company, & that he sold to Montague & others for the amount stated in his deed, all paid in cash, and that the land is located in Hamilton county, Tennessee.

Plaintiff also read the deposition of Henry E. Waite, in the words & figures following:

Deposition of Henry E. Waite.

In the United States Circuit Court for the Eastern District and Southern Division of Tennessee, at Chattanooga, Tenn.

JOHN SWANN, JOHN A. BILLUPS, TRUSTEES, & *and* THE STATE OF ALABAMA

vs.

THEO. G. MONTAGUE and Others.

81 Interrogatories and cross-interrogatories to be propounded to Henry E. Waite and answered by him, and the counsel for the respective parties waives notice, and the issuance of a commission to take his deposition, formal caption and certificate also waived, and agree that it may be taken before any notary public, only requiring that the notary before whom it is taken shall verify the same with his signature and his official seal, and such notary shall

transmit it by mail to the clerk of said court at Chattanooga, Tennessee.

W. L. EAKIN & SAM'L F. RICE,
Attorney for Plaintiffs.
WHEELER & MARSHALL,
Att'y for Defendants.

Inter. I on behalf of plaintiffs. State your age and residence, and where you resided during the years 1869 and 1870, and what position and relation you sustained to the Alabama and Chattanooga Railroad Company, at Chattanooga, Tennessee, if any, and, if you know, state through whom said company disbursed its funds at that point during the years 1869 and 1870.

82 Inter. II. If you answer that you were in the employ of said company during said period, state, in a general way, your duties.

Inter. III. State anything you may know in regard to the Alabama & Chattanooga Railroad Company purchasing from J. P. McMillen, of Chattanooga, Tennessee, some twenty or more acres of land within the corporate limits of Chattanooga, upon which there is a large spring, the same land said to be in controversy in this suit, and, if you know, state who made the payments for said lands, and how made, and, if made in more than one payment, state the number, date, and amount of each payment as nearly as you can.

Inter. IV. Please examine certified copy of deed of J. P. McMillen to the Alabama and Chattanooga Railroad Company and state whether or no you remember to have seen the original deed of which it purports to be a copy, or the title bond, the execution of which it recites; and, if so, state where and when, and state who had the custody of said papers when seen by you. You will at-

83 tach the paper shown you to your deposition, and make it a part thereof.

Inter. V. State, if you know, from what source the money was obtained, paid to McMillen for said land, and what became of the title bond executed by McMillen mentioned in the deed.

W. L. EAKIN & SAM'L F. RICE,
Attorneys for Plaintiffs.

Cross-interrogatories:

Cross-interro. 1. Are you positive the Alabama and Chattanooga Railroad Co. were the original purchasers of the twenty or more acres of land mentioned in the 3rd direct interrogatory? Was not said land originally purchased from J. P. McMillen by J. C. Stanton?

Cross-interro. 2. If you state in answer to 4th direct interrogatory that you saw the title bond referred to in the certified copy of deed from J. P. McMillen to the Alabama & Chattanooga R. R. Co., state if said title bond was not executed to J. C. Stanton, instead of to the Alabama & Chattanooga R. R. Co.

84 Cross-interro. 3. Was not the Alabama & Chattanooga R. R. Co. largely indebted to J. C. Stanton for advances in money

and for services rendered by said Stanton to said company, and did not you as a mode of payment frequently pay indebtedness of said Stanton out of the funds of said R. R. company and charge said Stanton's account with such payments upon your books?

Cross-interro. 4. What position did J. C. Stanton hold as to the Alabama & Chattanooga R. R. Company in the years 1870 & 1871?

Cross-interro. 5. Was not said Stanton in those years the general agent of said Alabama & Chattanooga R. R. Co., authorized to bind said company by contracts in its name and behalf? Did he not as such agent buy and sell lands in its behalf? Was he not the general agent of said company in the construction of its line of road, and did not his contracts in its behalf bind said company?

Cross-interro. —. Did not J. C. Stanton as agent, as attorney-in-fact of said Alabama & Chattanooga R. R. Co., sell said land in
85 the early part of 1871 to Thos. Webster? Was not said Alabama & Chattanooga R. R. Co. at the time of the sale largely indebted to said Webster, and did not Webster in payment for the land surrender notes, acceptances, or other forms of indebtedness of said company? Was not the entire amount of the purchase-money applied in payment of a valid subsisting indebtedness due from said company to said Webster? State fully how this was.

WHEELER & MARSHALL,
Att'ys for Def'ts.

Deed from J. P. McMillen to A. & C. R. R. Co.

CHATTANOOGA, TENNESSEE.

For and in consideration of nine thousand dollars, three thousand heretofore and six thousand this day, to me in hand paid, the receipt of which is hereby acknowledged, and in compliance with a title bond given dated 25 day of March, 1869, I hereby transfer and convey unto the Alabama and Chattanooga Railroad Company a certain piece or parcel of land lying within the corporate limits of the city of Chattanooga, Hamilton county, Tennessee, bounded as follows, to wit: Beginning at a stake the S. E. corner of a five-acre
86 lot known as the Billingby lot, two hundred & thirty-three & one-third (233⅓ ft.) from J. B. Weaver's S. E. corner; thence S. 70° E. seven hundred and eighty-seven (787 ft.) to a stake; thence N. 20° E. nine hundred, thirty-three and one-third (933⅓) feet to a stake; thence N. 70° W. five hundred and sixty-eight and a half (568½) feet to the S. W. corner of the three-acre lot occupied by A. O. Fisher; thence N. 20° E. with the line of said three-acre lot, three hundred and ninety-two (392) feet to a stake in the line formerly of J. P. Long, now S. J. Boyce; thence N. 70° W. with said line five hundred and thirty-one (531) feet to a stake, Slayton's N. E. corner; thence S. 20, W. with Slayton's and Mond's line, three hundred & sixteen (316) feet to a stake, the N. E. corner of the aforesaid Billingsby five-acre lot; thence with the line of said lot nine hundred and thirty-three and one-third (933⅓) feet to the beginning, containing, according to survey, about twenty two acres.

To have and to hold said land unto the said Alabama and Chat-

tanooga Railroad Company and its assigns or successors in office forever. The title to which I hereby warrant against the lawful claims of all persons whatever.

87 In testimony whereof I have hereunto set my hand and seal this March 31st, 1870.

J. P. McMILLIN. [SEAL.]

Attest:
JOHN M. GILLESPIE.
JAMES N. TRIGG.

STATE OF TENNESSEE, *Hamilton County:*

This day personally appeared before me, clerk of the county court for said county, J. P. McMillin, the bargainor in the foregoing deed of conveyance, with whom I am personally acquainted, and acknowleged that he executed the within deed for the purposes therein expressed.

Witness my hand at office in Chattanooga this 31st day of March, 1870.

R. H. GUTHRIE, *Clk.*
Per J. D. BLACKFORD, *D. C.*

STATE OF TENNESSEE, *Hamilton County:*

REGISTER'S OFFICE, *April 2nd*, 1870, *at 3 o'clock p. m.*

Then was the foregoing deed, with its certificate, received for registration, with nine dollars U. S. int. rev. stamp attached & cancelled, & is now of record in book "5," pages 542 & 543.

Witness my hand at office in Harrison, the day and date last above written.

JOHN F. HAMILL, *Register.*

88 STATE OF TENNESSEE, *Hamilton County:*

I, H. C. Beck, register of the county of Hamilton and State aforesaid, do hereby certify that the foregoing two pages contain a full, true, and correct copy of the deed (with its certifiates) from J. P. McMillen to the Alabama and Chattanooga Railroad Company, as the same appears of record in my office, in book "S," vol. 1, pages 542 & 543.

Witness my hand, at office in Chattanooga, this 29th day of August, 1882.

H. C. BECK, *Register,*
Per T. A. EVANS,
Deputy Register.

Endorsed: Ex. D. Certified copy of deed from J. P. McMillin to A. & C. R. R. Co. Issued Aug't 29 1882. H. C. Beck, register, per T. A. Evans, dep. reg.

Answer to 1st interrogatory. I was 37 years old last January, and reside at West Newton, Massachusetts. I was local treasurer of the Alabama and Chattanooga Railroad Company at Chattanooga, Tenn., from January, 1869, until November, 1871, and disbursed its funds there during that time.

Ans. to 2d int. My duties were the receiving and disbursing of the funds of said company at Chattanooga and along
89 the line of its road.

Ans. to 3d int. I remember that the Alabama & Chattanooga R. R. Co. purchased of J. P. McMillin, of Chattanooga, the tract of land there known as the "Spring" property. As local treasurer, I suppose I made the payment or payments, but not having the books of the railroad company before me cannot state positively. I should say, from my best recollection, that there were two payments, and that they were made either by my checks on the First National Bank of Chattanooga, or by drafts on the general treasurer of the railroad company at Boston or New York. I think the amounts were $3,000 and $6,000, respectively.

Ans. to 4th int. I have examined the certified copy of deed referred to, & have no doubt that at the time of the transaction I saw the original papers referred to, and doubtless read them to Mr. J. C. Stanton, to test their correctness. This at Chattanooga, Tenn. I cannot now say who had the custody of said papers.

90 Ans. to 5th int. The funds were doubtless obtained from the Alabama & Chattanoogo Railroad Co. at Boston or New York. I should say from reading the certified copy of the deed, that the title bond referred to was surrendered to Mr. J. P. McMillin upon the delivery of the deed, but cannot state positively.

Ans. to X-int. 1. As the transaction is recalled to my memory by reading the certified copy of the deed hereto attached, I should say that the land was purchased by the Alabama & Chattanooga R. R. Co. I have always understood it to be the property of said company after said purchase.

Ans. to X-int. 2. I have no data to refresh my memory about the title bond, excepting the certified copy of the deed hereto attached. An answer to this question would be my opinion, and I should say now that the title bond was executed in the same manner as the deed.

Ans. to X-int. 3. I should say that the Alabama & Chatta-
91 nooga R. R. Co. was not largely indebted to J. C. Stanton until the fall or winter of 1870. I think it was in July, 1870, that the company first became embarrassed at Chattanooga, and some time afterwards, before it became indebted to J. C. Stanton, or as a mode of payment paid his indebtedness.

Ans. to X-int. 4. His position was general superintendent in 1870 and 1871.

Ans. to X-int. 5. I know that J. C. Stanton made contracts and sold land for said company. I never saw any papers showing his authority for so doing. He was the general superintendent in the construction of its line of road.

Ans. to X-int. 6. To the best of my knowledge and belief J. C. Stanton, as general superintendent, sold said land early in the year 1871 to Thomas Webster. The company was at that time largely indebted to said Webster, and said Webster surrendered evidences of indebtedness of said company in payment for said land. The

greater part, if not all, of the purchase-money consisted of a
92 valid subsisting indebtedness due from said company to said Webster.

HENRY E. WAITE.

STATE OF MASSACHUSETTS, }
County of Suffolk, City of Boston, } ss:

I, James B. Bell, a notary public and justice of the peace in and for the county and State aforesaid, do hereby certify that the foregoing deposition was taken before me and subscribed and sworn to by the witness, Henry E. Waite, in my presence, on the day and date hereof, and I further certify that I am not interested in the cause, nor of kin or counsel to either of the parties, and that I sealed them up and put them in the post office, without being out of my possession or altered after the same was taken.

In witness whereof I have hereunto set my hand and affixed my official seal, the 14th day of September, A. D. 1882.

[Seal James B. Bell, Notary Public, Boston, Massachusetts.]

JAMES B. BELL,
Notary Public & J. of P.

Fees: Postage, registering charges, &c., $5.00. Paid by the plaintiffs.

Endorsed: Rec'd from post office, and by consent of counsel both for plaintiffs & defendants opened & filed by me Sept. 22d, 1882. A. R. Humes, clerk, by C. W. Vinson, D. C.

93 The defendants read as evidence the two agreements, signed by counsel, hereinbefore made parts of this bill of exceptions, but need not be here again copied. They also prove that there was a large spring of water on said land, around which a twelve-foot-square covered building was erected by defendants within a year or two after the purchase from Webster. This building was floated upon the hill a short distance, probably 20 feet, from the spring in the freshet of 1875. It still remains on the side of the hill. They also proved that a part of the land was rented in 1874 or 1875 for the purpose of making brick, & was so used for several years, but said use had been discontinued for several years prior to the institution of this suit.

This was all the proof.

The plaintiffs asked the court to instruct the jury that if it appeared from the proof that the mortgagor, The Alabama and Chattanooga Railroad Company, had an equitable title to the
94 premises in dispute at the date of its mortgage to the State of Alabama and afterwards acquired the legal title, before it sold to Thomas Webster, and if the mortgagor had made default upon the payments of interest due upon its bonds for the security of which the mortgage was executed, this would authorize the plaintiffs to sustain an action of ejectment, & they would find for the plaintiff upon this point.

Which instruction was refused by the court; the plaintiffs duly excepted, and the court then charged the jury as follows:

Charge to Jury.

"In an action of ejectment the plaintiffs must recover upon the strength of *his* title. In this court in this action the plaintiffs must show they had a valid legal title to the premises sued for, or some part of the premises, or that one or more of the plaintiffs had such title. The plaintiffs claim under a title from McMillen; McMillen bargained the lands, as appears from the recitations of his deed, on the 25th of March, 1869, and executed his bond for title to the Alabama and Chattanooga Railroad Company.

"The plaintiffs have read a mortgage deed of said railroad company, executed to the State of Alabama, dated March 2nd,
95 1870, which they insist embraces this land, and they have read a deed from McMillen to said railroad company which by its terms conveyed the legal title of the premises to the company on the 31st of March, 1870, and after the date of the mortgage deed; and the plaintiffs have read a deed from the Governor of Alabama conveying to Billups and Swann, two of the plaintiffs, such title as the State of Alabama had acquired by virtue of the mortgage deed to the property mentioned therein; and these form their claim of title. Upon their own testimony they can have no more than an equitable title to the premises sued for.

"And I therefore direct you to return a verdict in favor of the defendants.

"Plaintiffs' counsel insist the act of 1872, R. S., § 914, has so changed the law that if a recovery could be had under plaintiffs' title in this State in a State court that there must also be a recovery here, and they insist that they would be entitled to recover in a State court. I do not concur in this view of the matter. I do not believe that this act has changed in anywise the equity jurisdiction of the court of the United States.

96 "This view of the cause renders it unnecessary for me to charge you in regard to the other questions which have been so ably argued by the attorn*ies* for the plaintiffs."

To the foregoing charge of the court the plaintiffs duly excepted, and the pl'ff's also duly excepted to each paragraph as well as to each divisible part of said charge of the court, and the court dispensed with any statement by pl'ff's of the grounds, causes, or reasons for any of said several exceptions to said charge, and therefore pl'ff's did not state those grounds, causes, & reasons.

The plaintiffs tender this their bill of exceptions, which is signed, sealed, and made a part of the record of this cause.

This 20th day of November, 1882.

D. M. KEY, *Judge, &c.*

Endorsed: Filed April 14th, 1883. A. R. Humes, clerk, by C. W. Vinson, D. C.

97 *Law Cost Bill.*

THE STATE OF ALABAMA *et als.* vs. THEODORE G. MONTAGUE *et als.* } No. 6.

	Plaintiffs.
Clerk's fees:	
Filing 1 declaration, each $ .10	10
Filing — amended petitions, each .10	
Drawing pros. bond, 30c., 2 acknowl'ments at 25c. each, & filing, 10c.	90
Entering rule for answer, .30	
Issuing 3 summons, each 1.00	3 00
Filing same and entering return, each .25	75
Copying 6 summons, at 75c. ea. (includes cert. & seal, 35c.)	4 50
Copying 1 declaration, $1.95, with cert. & seal, 35c.	2 30
Filing 1 answer, pleas, each .10	10
Filing — stipulations, each .10	
Copying — answers, folios, each folio .10	
Filing — replications, each .10	
Filing — demurrers, each .10	
Filing — motions, each .10	
Filing — affidavits, each .10	
Filing and endorsing 1 deposition, each .25	25
Filing — precipes, each .10	
Issuing 1 subpœna, each .25	25
Filing same, each .10	10
Swearing witnesses, each .10	
Taking proof of attendance of — witnesses, each .10	
Certifying attendance of — witnesses, each .10	
Entries on journal — folios, each folio .15	
Entering 7 orders, &c., of court, each .15	1 05
Entering judgment, 4 folios, each folio .15	60
Filing 1 motion for new trial, each .10	10
Dockets, indexes, etc., issue joined, & testimony given	3 00
Record, 70 folios, each folio .15	10 50
Filing — cost bill, each .10	10
Commissions on $—, received and paid 1 per cent.	
Making transcript, 194 folios, @ 10c.; cert. & seal, .35	19 75
Drawing plat of land, &c.	1 00
Issuing citation, 1.00; issuing writ of error, 1.00	2 00
Taking 3 acknowledgements to bond, @ .25	75
Total clerk's fees	$51 10

98 *Damages and Costs.*

Damages	
Clerk's fees	51 10
Marshal's fees, Deputy L. L. Sample	51 00
Docket fees, Wheeler & Marshall	20 00
Register H. C. Beck	2 30

Register's fee, paid by Xen. Wheeler	3 50
Fees on depositions, Wheeler & Marshall	2 50
Witness fees	
Total	$130 40

Costs paid by plaintiffs.

A. R. HUMES, *Clerk.*

[Endorsed:] No. 6. United States circuit court, eastern district of Tennessee. The State of Alabama *et als.* against Theodore G. Montague *et als.* Law cost bill. Filed August 2nd, 1883. Wm. G. McAdoo, Jr., dept. clerk.

99 UNITED STATES OF AMERICA, } *ss:*
Eastern District of Tennessee, Southern Division, }

I, A. R. Humes, clerk of the United States circuit court for the district and division aforesaid, do hereby certify that the foregoing is a full, true, and correct copy of the record and proceedings had in said court in the case of the State of Alabama *et als. vs.* Theodore G. Montague *et als.*, as the same appears of record and on file in my office.

In testimony whereof I hereunto subscribe my name officially and affix the seal of said at office, in Chattanooga, this the 12th day of July, A. D. 1883.

[The Seal of the United States Circuit Court, District of East Tenn., Southern Div'n.]

A. R. HUMES, *Clerk,*
By WM. G. McADOO, JR.,
Dep't Clerk.

100 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the southern division of the eastern district of Tennessee, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, between The State of Alabama and John Swann and John A. Billups, trustees as well as grantees, plaintiffs, and Theodore G. Montague, in his own right and as ag't for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodburry; also Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodburry, Lewis Aufrecht, Charles Woodburry, —— Monteith, formerly —— Woodburry, and her husband, George Monteith; Arthur Woodburry, Sarah M. Sherwood, Marion Carlile, Walter Carlile, Nellie Younge, W. W. Younge, Cornelia Carlile, Harriet Garrabrant, J. A. Kauher, Bradford Post, Maggie Roberts, D. F. Blanton, Mattie Worley, and her husband, Samuel Worley; Jacob Peyor, —— Adcock, widow of J. A. Adcock, Albert D. Mahoney, Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, and William Barlow, defendants, a manifest error hath happened, to the great damage of the said State of Alabama, John Swann, and John

A. Billups, trustees as well grantees, plaintiffs, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 28th day of May, in the year of our Lord one thousand eight hundred and eighty-three.

[The Seal of the United States Circuit Court, District of East Tenn., Southern Div'n.]

A. R. HUMES,
Clerk of the Circuit Court of the United States
for the Eastern District of Tennessee.
By WM. G. McADOO, Jr.,
Deputy Clerk.

Allowed by—
D. M. KEY, *Judge, &c.*

101 THE UNITED STATES OF AMERICA:

To Theodore G. Montague, in his own right, and as ag't for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodburry, and Lewis Aufrecht; also Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Lewis Aufrecht, Charles Woodburry, —— Monteith, formerly —— Woodburry, and her husband, George Monteith; Arthur Woodburry, Sarah M. Sherwood, Marion Carlile, Walter Carlile, Nellie Younge, Cornelia Carlile, Hariet Garrabrant, J. A. Kauher, Bradford Post, Maggie Roberts, D. F. Blanton, Mattie Worley, and her husband, Samuel Worley, Jacob Peyor, —— Adcock, widow of J. Adcock, Albert D. Mahoney, Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, and William Barlow, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the U. S. circuit court for the southern division of the eastern dist. of Tenn., on the fourteenth day of April, one thousand eight hundred and eighty-three, wherein The State of Alabama, and John Swann and John A. Billups, trustees as well as grantees, are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 107th.

[The seal of the United States Circuit Court, District of East Tenn., Southern Div'n.]

D. M. KEY, *Judge, &c.*

102 [Endorsed:] We acknowledge due and legal service of the within citation this 28th day of May, 1883; also a copy of citation. Wheeler & Marshall, att'ys for def'ts.

103 Know all men by these presents that we, The State of Alabama and John Swann and John A. Billups, trustees as well as grantees, and J. W. Kelly, G. W. Davenport, are held and firmly bound unto Theodore G Montague in his own right and as agent for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Francis Woodburry, and Lewis Aufrecht and Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, Lewis Aufrecht, Charles Woodburry, — Montieth, formerly — Woodburry, and her husband, George Monteith, Arthur Woodburry, Sarah M. Sherwood, Marian Carlile, Walter Carlile, Nellie Younge, W. W. Younge, Cornelia Carlile, Harriet Garrabrant, J. A. Kauher, Bradford Post, Maggie Roberts, D. F. Blanton, Mattie Worley, and her husband, Samuel Worley; Jacob Peyor, — Adcock, widow of J. Adcock; Albert D. Mahoney, Bird Ashley, George Harris, C. B. Reeves, M. B. Rogers, and William Barlow, defendants, in the full and just sum of two hundred and fifty dollars, to be paid to the said defendants above named, to wit, Theodore G. Montague and others, as herein named, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-eighth day of May, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately at a circuit court of the United States for the southern division of the eastern district of Tennessee, in a suit depending in said court between The State of Alabama and John Swann and John A. Billups, trustees as well as grantees, plaintiffs, and the above named T. G. Montague and other defendants above named as defendants, judgment was rendered against the said The State of Alabama, John Swann, and John A. Billups, trustees as well as grantees, plaintiffs, as aforesaid, and the said plaintiffs above named having prayed an- obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the said judgment in the aforesaid suit, and a citation directed to the said defendants above named, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such that, if the said The State of Alabama, John Swann, and John A. Billups, trustees as well as grantees, plaintiffs, as aforesaid, shall prosecute their

said writ of error to effect and answer all costs; if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN SWANN, *Trustee*, [SEAL.]
J. W. KELLY, [SEAL.]
GEO. DAVENPORT, [SEAL.]

Sealed and delivered in presence of—
SAM'L F. RICE.

Approved by—
D. M. KEY,
U. S. Judge of Eastern Dist. of Tennessee.

Endorsed on cover: E. Tennessee, C. C. U. S. No. 335. The State of Alabama, John Swann, and John A. Billups, trustees as well as grantees, plaintiffs in error, *vs.* Theodore G. Montague, in his own right and as agent for Xenophon Wheeler, George M. Sherwood, Isaac H. Tower, *et al.* Filed 5th October, 1883.